

ADDENDUM TO CONSUMER FINANCE BULLETIN 1991-1

SUBJECT: Clarification of definition of full-time employee under the Mortgage Brokers, Lenders, and Servicers Licensing Act.

On May 15, 1991 the Bureau issued Consumer Finance Bulletin 1991-1 which sets forth the Bureau's position on the exemption from licensing for full-time employees contained in Section 2 of the Mortgage Brokers, Lenders, and Servicers Licensing Act, Act No. 173, Public Acts of 1987, as amended (Act). In that bulletin the Bureau specified that persons compensated on a commissions-only basis normally would not fall within the definition of full-time employee and thus would be required to individually obtain the appropriate license or registration under the Act.

Subsequent to the issuance of Consumer Finance Bulletin 1991-1, the Bureau has received numerous inquiries from interested persons regarding commissions-only personnel. In light of these inquiries, the Bureau believes further clarification would be appropriate and helpful.

In determining whether a person is a full-time employee or an independent contractor, no one fact or circumstance is necessarily conclusive. Whether or not a full-time employee relationship exists is to be determined from all the facts and circumstances of each case. The fact that a person is paid on a commissions-only basis does not necessarily preclude the person from being a full-time employee as that term is used in Section 2 of the Act. The method of compensation is only one of many factors that would have to be reviewed. Other factors of importance would include:

- (1) Whether or not the employer assumes responsibility and liability for the actions of employed personnel.
- (2) Whether the employer retains the right to direct and control the manner in which the work is done.
- (3) The employer's powers and duties with respect to the hiring and firing of personnel.
- (4) Whether or not the employer is withholding income for federal, state and local income taxes as well as withholding for and paying the appropriate payroll and unemployment taxes.
- (5) The extent to which personnel originating loans are carrying on an independent business.

The burden of proof will be on each licensee or registrant to show that its personnel meet the definition of full-time employees or are otherwise properly licensed or registered under the Act. Each licensee or registrant should be prepared to demonstrate the essential characteristics of the employer-employee relationship upon inquiry by the Bureau.

This addendum is to be reviewed with bulletin 1991-1. If you should have any questions on this addendum or on bulletin 1991-1, please contact the Consumer Finance Division of the Financial Institutions Bureau at 517/373-3470.

/s/

Ann Gaultney, Director
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/s/

Russell S. Kropschot
Acting Commissioner

November 6, 1992

Date